

McArthur



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Maytal Construction Corporation

**File:** B-241501; B-241501.2

**Date:** December 10, 1990

Norman D. Alvy, Esq., Goldberg & Connolly, for the protester.  
Alton E. Woods, Esq., Department of the Interior, for the  
agency.

C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and  
Michael R. Golden, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

1. Agency properly rejected as nonresponsive a bid accompanied by a bid bond where the penal sum of the bond had been typed over a whited-out figure without evidence in the bid documents or the bond itself that the surety had consented to the alteration.

2. Low bidder whose bid properly was rejected as nonresponsive is not an interested party to argue that the next low bid also should be rejected as nonresponsive where there is another bidder which would be in line for award if the next low bid were rejected.

### DECISION

Maytal Construction Corporation protests the award of a contract under invitation for bids (IFB) No. FIIS-200-R, issued by the National Park Service, Department of the Interior. The protester contends that the agency improperly rejected its bid as nonresponsive.

We deny the protest in part and dismiss it in part.

The agency issued the solicitation on August 9, 1990, for construction work at the Fire Island National Seashore in New York. The solicitation required that a bid guarantee, in the amount of 20 percent of the bid price or \$3 million, whichever was less, accompany all bids in excess of \$25,000.

The agency received 17 bids on September 11. The protester, which had submitted the low bid, provided a Standard Form 24, bid bond, indicating that the surety was guaranteeing

1117 RVC

20 percent of the bid price, providing also that the guarantee was in an amount not to exceed \$183,000, as follows:

PERCENT OF BID PRICE	PENAL SUM OF BOND AMOUNT NOT TO EXCEED			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
20%		18(3)	00	00

The numeral "3" that constituted the third digit of the figure "183" in the thousands column was in a different type face than the remainder of the bid bond and had obviously been typed over a whited-out figure.

Accordingly, in the absence of evidence in either the bid or the bid bond that the surety had consented to this alteration of the bond, the agency awarded a contract to the next low, responsive bidder, I.P.I. Industries, Inc. on September 28. By letter of the same date, the agency notified Maytal that it was rejecting its bid as nonresponsive. This protest followed.

The protester contends that it did not alter the bid in a material manner, but that with the permission of the surety, it changed the figure "180" that originally appeared on the bond to "183." The change was necessary when the protester decided, on the day that bids were due, to increase its bid to \$913,000. The protester argues that the surety's liability was established, in any event, by the 20 percent limit set forth on the Standard Form 24, so that the penal amount was clear on the face of the bid. The protester contends that the contracting officer had discretion to accept the bid and that the rejection of Maytal's bid was unreasonable.

The submission of a required bid bond is a material condition of responsiveness with which there must be compliance at the time of bid opening. Kinetic Builders, Inc., B-223594, Sept. 24, 1986, 86-2 CPD ¶ 342. Since a material alteration of a bid bond made without evidence of the surety's consent discharges the surety from liability, it renders the bid nonresponsive. Giles Management Constructors, Ltd., B-227982, Sept. 14, 1987, 87-2 CPD ¶ 248.

Although the bond did provide for a penal amount of 20 percent, it also provided that the penal amount would not exceed the figure to the right, on the standard form 24, a figure that was either "180" or "183" or possibly "18." It is not relevant that the alteration was made with the surety's consent if there is no evidence of this on the face of the bid or the bond; a material defect in a bid bond cannot be explained or corrected after opening since this would place the surety in a position to disavow its obligation, thus

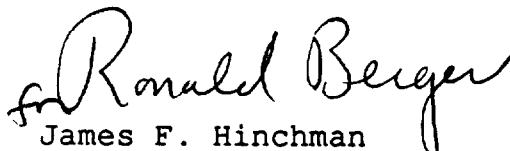
compromising the integrity of the sealed bidding system by permitting the bidder to decide after bid opening whether or not to make its bid acceptable. Southland Constr. Co., B-196297, Mar. 14, 1980, 80-1 CPD ¶ 199. We find that the agency properly rejected the protester's bid as nonresponsive.

The protester also contends that the bid of I.P.I. Industries is nonresponsive because the liability limit that the surety entered at the bottom of the Standard Form 24, 5 percent, differs from the penal sum, which was in the required amount of 20 percent.

Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(2) (1988), and our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1990), a protest may be filed only by an interested party, defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the contract at issue. A party will not be considered interested where it would not be in line for award even if its protest were sustained. JC Constr. Co., B-229486, Dec. 29, 1987, 87-2 CPD ¶ 640.

Here, since the agency properly rejected the protester's bid as nonresponsive, and there is at least one bidder which would be in line for award if the agency rejected the bid of I.P.I. Industries, Maytal is not an interested party to challenge the award on this basis. Northwest Pesticide Enters., Inc., B-235982, Sept. 28, 1989, 89-2 CPD ¶ 284.

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel